

### **REMARKS**

The Office Action dated April 6, 2009, has been received and carefully noted. The above amendments to the specification and claims, and the following remarks, are submitted as a full and complete response thereto.

By this Response, the specification has been amended to address formal matters. Claims 1-2, 4-5, and 7 have been amended to more particularly point and distinctly claim the subject matter of the present invention. No new matter has been added. Claims 1-10 are currently pending in the application, of which claim 1 is independent.

In view of the above amendments and the following remarks, Applicants respectfully request reconsideration and timely withdrawal of the pending rejections to the claims for the reasons discussed below.

#### ***Priority***

The Office Action asserted that the subject application claims priority to a Japanese application, but that a reference to the prior application was not included in the specification of the subject application or in an application data sheet. Applicants respectfully submit that a reference to Japanese Patent Appln. No. 2004-361025 ("the '025 application"), filed on December 14, 2004, was in fact properly included in the application data sheet which was filed with the subject application on April 18, 2006. In addition, a reference to International Patent Appln. No. PCT/JP2005/017973 ("the '973 application"), filed on September 29, 2005, was properly included in the application data

sheet. This information was also included in the Declaration as filed with the subject application. Nevertheless, Applicants have amended the specification to claim priority under 35 U.S.C. 119 to the '025 application, and to indicate that the subject application is a U.S. national stage application based on the '973 application. Accordingly, since the priority claim was timely made, Applicants respectfully request that the references to the '025 and the '973 application in the application data sheet and the specification be acknowledged, and that this assertion of the Office Action be withdrawn.

***Claim Rejection - 35 U.S.C. 102***

Claims 1-10 were rejected under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent Appln. Pub. No. 2007/0018470 of Hayakawa et al. ("Hayakawa"). Applicant respectfully traverse this rejection as being legally improper.

Hayakawa cannot be cited against the present application to show anticipation, since Hayakawa is not available as prior art. Hayakawa was published on January 25, 2007, which is after the priority date of the present application. The present application claims priority under 35 U.S.C. 119 to the '025 application, filed on December 14, 2004, and is a U.S. national stage application based on the '973 application, filed on September 29, 2005. Since the present application antedates Hayakawa's publication, the only possible section of 35 U.S.C. 102 under which Hayakawa could be applicable as prior art for anticipation is 35 U.S.C. 102(e). However, in order for Hayakawa's filing date, August 31, 2004, to qualify as an 102(e) priority date, Hayakawa's International Patent

Appln. No. PCT/JP04/12573 (“the ‘573 application”) must designate the U.S. and be published in English under MPEP 706.02(f)(1)(I)(D). The ‘573 application was not published in English, and therefore, fails to obtain an 102(e) date.

In addition, MPEP 706.02(f)(1)(I)(D) states that foreign applications’ filing dates that are claimed in applications, which have been published as U.S. application publications in the U.S., may **not** be used as 35 U.S.C. 102(e) dates for prior art purposes. Thus, Hayakawa’s priority (not actual) filing date, September 12, 2003, based on its relationship to Japanese Patent Appln. No. 2003-321850, cannot be used as an 102(e) date.

Therefore, as demonstrated above, Hayakawa is not available as prior art against any of the claims of the present application. Accordingly, Applicants respectfully submit that this rejection is clearly improper, and respectfully request that this rejection be withdrawn.

Reconsideration and allowance of claims 1-10 are, thus, respectfully requested.

### ***Conclusion***

For at least the reasons discussed above, Applicants respectfully submit that the outstanding claim rejection under 35 U.S.C. 102 is legally improper, and respectfully request that the rejection be withdrawn. It is thus respectfully requested that all of claims 1-10 be allowed, and that this application be passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, Applicants' undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, Applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



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